

AMENDED IN SENATE JUNE 5, 2002
AMENDED IN ASSEMBLY JANUARY 9, 2002
CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 117

Introduced by Assembly Member Migden

January 22, 2001

An act to amend Sections 331 ~~and 366~~, 366, 394, and 394.25 of, and to add Section 381.1 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 117, as amended, Migden. Electrical restructuring: aggregation.

(1) Existing law, relating to transactions between electricity suppliers and end-use customers, authorizes various entities to aggregate electrical loads, and defines an “aggregator” as one of those entities that provides power supply services, including combining the loads of multiple end-use customers and facilitating the sale and purchase of electrical energy, transmission, and other services on behalf of the end-use customers.

This bill would, instead, authorize customers to aggregate their electric loads as individual consumers with private aggregators, as defined, or as members of their local community with community choice aggregators, as defined. The bill would authorize a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries. *The bill would require a community choice aggregator to file an implementation plan with the*

Public Utilities Commission and would prohibit the commission from approving any plan for community choice aggregation subsequent to September 20, 2001, unless, as a condition of approval, exit fees are imposed on customers electing to participate in the community choice aggregation plan in an amount sufficient to recover any reasonably unavoidable past or future power procurement costs incurred by the electrical corporation for bundled service customers or by the Department of Water Resources and to prevent cost shifting to remaining customers served by the electrical corporation or the Department of Water Resources. Because a violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program. ~~The bill would require a retail end-use customer electing to purchase power from a community choice aggregator to pay specified amounts for Department of Water Resources costs, as defined. The bill would require the commission to ensure that the net unavoidable costs of power procurement by any electrical corporation are not shifted onto the electrical corporation's remaining customers.~~

(2) Existing law requires the Public Utilities Commission to order certain electrical corporations to collect and spend certain funds for public benefit programs, including cost-effective energy efficiency and conservation programs.

The bill would require the commission to require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory *without regard to customer class*.

(3) Existing law defines "electric service provider" as an entity that offers electrical service to residential and small commercial customers, but not including an electrical corporation and requires these providers to register with the commission.

This bill would include a provider of electricity to a community choice aggregator within the definition of an "electric service provider."

This bill would provide that if a customer of an electric service provider is involuntarily returned to service provided by an electrical corporation, any reentry fees imposed on that customer are to be the obligation of the electric service provider. The bill would require the



electric service provider, as a condition to its registration, to post a bond or demonstrate insurance sufficient to cover paying those reentry fees.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 331 of the Public Utilities Code is
2 amended to read:

3 331. The definitions set forth in this section shall govern the
4 construction of this chapter.

5 (a) “Broker” means an entity that arranges the sale and
6 purchase of electric energy, transmission, and other services
7 between buyers and sellers, but does not take title to any of the
8 power sold.

9 (b) “Community choice aggregator” ~~or “municipal~~
10 ~~aggregator”~~ means any of the following entities, if that entity is
11 not within the jurisdiction of a municipal utility district that
12 provided electrical service as of the effective date of amendments
13 to this section made by Assembly Bill 117 of the 2001–02 Regular
14 Session of the Legislature:

15 (1) Any city, county, or city and county whose governing board
16 elects to combine the loads of its residents, businesses, and
17 municipal facilities in a communitywide electricity buyers’
18 program.

19 (2) Any group of cities, counties, or cities and counties whose
20 governing boards have elected to combine the loads of their
21 programs, through the formation of a joint powers authority
22 established under Chapter 5 (commencing with Section 6500) of
23 Division 7 of Title 1 of the Government Code.

24 (c) “Direct transaction” means a contract between any one or
25 more electric generators, marketers, or brokers of electric power
26 and one or more retail customers providing for the purchase and
27 sale of electric power or any ancillary services.

(d) “Fire wall” means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) “Marketer” means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) “Microcogeneration facility” means a cogeneration facility of less than one megawatt.

(g) “Private aggregator” means any marketer, broker, or public agency not qualifying as a community choice aggregator that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers.

(h) “Restructuring trusts” means the two tax-exempt public benefit trusts established by Decision 96-08-038 of the commission to provide for design and development of the hardware and software systems for the Power Exchange and the Independent System Operator, respectively, and that may undertake other activities, as needed, as ordered by the commission.

(i) “Small commercial customer” means a customer that has a maximum peak demand of less than 20 kilowatts.

SEC. 2. Section 366 of the Public Utilities Code is amended to read:

366. (a) (1) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electric loads as individual consumers with private aggregators, or as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads with private aggregators on a voluntary basis, if each customer does so by a positive written declaration.

(3) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community’s aggregation program.

(4) If a customer makes no positive declaration to aggregate with a private aggregator, opts out of a community choice

1 aggregator's program, or has no community choice program
2 available, that customer shall continue to be served by the existing
3 electrical corporation or its successor in interest.

4 (b) Private aggregation of customer electrical load shall be
5 authorized by the commission for all customer classes, including,
6 but not limited to, small commercial or residential customers.
7 Private aggregation may be accomplished by private market
8 aggregators, special districts, and public agencies not qualifying
9 as community choice aggregators, or on any other basis made
10 available by market opportunities and agreeable by positive
11 written declaration by individual consumers.

12 (c) If a public agency seeks to serve as a community choice
13 aggregator on behalf of residential customers, it shall be obligated
14 to offer the opportunity to purchase electricity to all residential
15 customers within its jurisdiction.

16 (d) (1) A community choice aggregator is hereby authorized
17 to aggregate the electrical load of interested electricity consumers
18 within its boundaries to reduce transaction costs to consumers,
19 provide consumer protections, and leverage the negotiation of
20 contracts. However, the community choice aggregator may not
21 aggregate electrical load if that load is served by a local publicly
22 owned electric utility, as defined in subdivision (d) of Section
23 9604. A community choice aggregator may group retail electricity
24 customers to solicit bids, broker, and contract for electric power
25 and energy services for those customers. The community choice
26 aggregator may enter into agreements for services to facilitate the
27 sale and purchase of electric energy and other related services.
28 Those service agreements may be entered into by a single city or
29 county, a city and county, or by a group of cities, cities and
30 counties, or counties.

31 (2) Under community choice aggregation, customer
32 participation may not require a positive written declaration, but all
33 customers shall be informed of their right to opt out of the
34 community choice aggregation program. If no negative
35 declaration is made by a customer, that customer shall be served
36 through the community choice aggregation program.

37 (3) A community choice aggregator establishing load
38 aggregation pursuant to this section shall develop an
39 implementation plan detailing the process and consequences of
40 aggregation. The implementation plan, and any subsequent



1 changes to it, shall be considered and adopted at a duly noticed
2 ~~public hearing. Any community choice load aggregation~~
3 ~~established pursuant to this section shall provide for universal~~
4 ~~access, reliability, and equitable treatment of all classes of~~
5 ~~customers and shall meet any requirements established by state~~
6 ~~law or by the commission concerning aggregated service. A public~~
7 ~~hearing. The implementation plan shall be filed with the~~
8 ~~commission.~~

9 (4) A community choice aggregator establishing load
10 aggregation shall prepare a statement of intent with the
11 implementation plan. ~~The plan shall include all of the following:~~
12 *Any community choice load aggregation established pursuant to*
13 *this section shall provide for the following:*

14 (A) *Universal access.*

15 (B) *Reliability.*

16 (C) *Equitable treatment of all classes of customers.*

17 (D) *Any requirements established by state law or by the*
18 *commission concerning aggregated service.*

19 (5) *In order to determine the exit fees to be imposed pursuant*
20 *to subdivision (e) that shall be paid by the customers of the*
21 *community choice aggregator to prevent shifting of costs, the*
22 *community choice aggregator establishing load aggregation shall*
23 *include in its implementation plan all of the following:*

24 (A) *An organizational structure of the program, its operations,*
25 *and its funding.*

26 (B) *Ratesetting and other costs to participants.*

27 (C) *Provisions for disclosure and due process in setting rates*
28 *and allocating costs among participants.*

29 (D) *The methods for entering and terminating agreements with*
30 *other entities.*

31 ~~(D)–~~

32 (E) *The rights and responsibilities of program participants.*

33 ~~(E)–~~

34 (F) *Termination of the program.*

35 ~~(4) All electrical corporations shall cooperate fully with cities,~~
36 ~~counties, or cities and counties~~

37 (G) *Any additional information the commission determines is*
38 *necessary to determine exit fees as provided for in subdivision (e).*

39 (6) *The commission shall notify any electrical corporation*
40 *serving the customers proposed for aggregation that an*

1 *implementation plan initiating community choice aggregation has*
2 *been filed within 10 days of the filing.*

3 (7) *Within 90 days after the community choice aggregator*
4 *establishing load aggregation files its implementation plan, the*
5 *commission shall certify that it has received the implementation*
6 *plan, including any additional information necessary to determine*
7 *exit fees. Upon certification, the commission shall then provide the*
8 *community choice aggregator with its findings on whether or not*
9 *an exit fee must be paid by customers of the community choice*
10 *aggregator to prevent a shifting of costs as provided for in*
11 *subdivision (e).*

12 (8) *No entity specified in subdivision (b) of Section 331*
13 *proposing community choice aggregation shall act to furnish*
14 *electricity to electricity consumers within its boundaries until the*
15 *commission has determined whether an exit fee must be paid by the*
16 *customers of that proposed community choice aggregation*
17 *program. The commission shall designate the earliest possible*
18 *effective date for implementation of a community choice*
19 *aggregation program, taking into consideration the impact on the*
20 *annual procurement plan of the electrical corporation.*

21 (9) *All electrical corporations shall cooperate fully with any of*
22 *the entities specified in subdivision (b) of Section 331 that*
23 *investigate, pursue, or implement community choice aggregation*
24 *programs. Cooperation shall include providing ~~cities, counties, or~~*
25 *~~cities and counties~~ the entities with appropriate billing and load*
26 *data, including, but not limited to, data detailing energy needs and*
27 *patterns of usage, as determined by the commission, and in*
28 *accordance with procedures established by the commission.*
29 *Electrical corporations shall continue to provide all metering,*
30 *billing, collection, and customer service to retail customers that*
31 *participate in community choice aggregation programs. Bills sent*
32 *by the electrical corporation to retail customers shall identify the*
33 *community choice aggregator as providing the energy component*
34 *of the bill. The commission shall determine the terms and*
35 *conditions under which the electrical corporation provides*
36 *services to community choice aggregators and retail customers.*

37 ~~(5)–~~

38 (10) (A) *A city, county, or city and county that elects to*
39 *implement a community choice aggregation program within its*
40 *jurisdiction pursuant to this chapter shall do so by ordinance.*

(B) Two or more cities, counties, or cities and counties may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A).

~~(6)–~~

(11) Following adoption of aggregation through the ordinance described in paragraph ~~(5)~~ (10), the program shall allow any retail customer to opt out and choose any supplier or provider as provided by applicable commission policies. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers who have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within ~~180 days~~ 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (4) of subdivision (a). Customers who return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. ~~No community choice aggregation customer returning to default service may be charged for any cost associated with obligations incurred on behalf of the customer that were paid by the customer or the community choice aggregator during the time the customer was served by the community choice aggregator. Any reentry fees to be~~ Any reentry fees to be imposed after the ~~180-day opt-out period~~ opt-out period specified in this paragraph shall be approved by the commission and shall reflect the cost of reentry. *The commission shall exclude any amounts previously determined and paid pursuant to subdivision (e) from the cost of reentry.*

~~(7)–~~

(12) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electric customers to obtain or receive service

1 from any authorized service provider *in a manner consistent with*
2 *law*.

3 ~~(8)~~

4 (13) (A) The aggregated entity shall fully inform participating
5 customers 30 days in advance of the date of commencing
6 automatic enrollment, and for not less than three consecutive
7 billing cycles following enrollment. Notification may include, but
8 is not limited to, direct mailings to customers, or inserts in water,
9 sewer, or other utility bills. Any notification shall inform
10 customers of both of the following:

11 (i) That they are to be automatically enrolled and that the
12 customer has the right to opt out of the aggregated entity without
13 penalty.

14 (ii) The terms and conditions of the services offered.

15 (B) The community choice aggregator may contract with the
16 electrical corporation for the notification required in subparagraph
17 (A). If the aggregated entity elects to send one or more of the
18 notifications required pursuant to subparagraph (A) in the
19 electrical corporation's normally scheduled monthly billing
20 process, the electrical corporation shall be entitled to recover from
21 the aggregator all reasonable *incremental* costs it incurs related to
22 the notification or notifications. The electrical corporation shall
23 fully cooperate with the aggregated entity in determining the
24 feasibility and costs associated with using the electrical
25 corporation's normally scheduled monthly billing process to
26 provide one or more of the notifications required pursuant to
27 subparagraph (A).

28 (C) Each notification shall also include a mechanism by which
29 a ratepayer may opt out of community choice aggregated service.
30 The opt-out may take the form of a self-addressed return postcard
31 indicating the customer's election to remain with, or return to,
32 service provided by the electrical corporation, or another
33 straightforward means by which the customer may elect to derive
34 electrical service through the electrical corporation providing
35 service in the area.

36 ~~(9)~~

37 (14) The aggregated entity shall register with the commission,
38 which may require additional information to ensure compliance
39 with basic consumer protection rules and other procedural matters.

40 ~~(10)~~

(15) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

~~(11)~~

(16) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

~~(12)~~

(17) An electrical corporation may recover from ratepayers all reasonable costs, as determined by the commission, of implementing Assembly Bill 117 of the 2001–02 Regular Session, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided by an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

~~(e) (1) Any retail end-use customer that purchases power from a community choice aggregator pursuant to this section shall pay to the Department of Water Resources both of the following amounts:~~

~~(A) The difference, if any, between the Department of Water Resources' total actual procurement costs, including financing costs, and the rates collected by the Department of Water Resources from that customer during the term of service.~~

~~(B) The Department of Water Resources' net unavoidable cost of future power procurement, including any financing costs, attributable to that customer, as determined by the Department of Water Resources.~~

~~(2) Any amounts due pursuant to this subdivision for the purchase of power may be payable in installments over a term coincident with the term of bonds issued to finance the purchase of that power.~~

~~(3) A community choice aggregator at the request of a participating customer shall submit a request to the Department of Water Resources for an estimate of each amount that would be due under paragraph (1) for the customer. The Department of Water~~

1 ~~Resources shall provide the estimate to the customer and to the~~
2 ~~Legislature within 30 days of the request. The estimate of each~~
3 ~~amount shall include the calculations and a description of the~~
4 ~~methodology used in making the estimates.~~

5 ~~(f) The commission shall develop rules to ensure that the net~~
6 ~~unavoidable costs of power procurement by an electrical~~
7 ~~corporation are not shifted onto the electrical corporation's~~
8 ~~remaining customers, but are the responsibility of the electrical~~
9 ~~corporation's former customers being served by a community~~
10 ~~choice, municipal or private aggregator, that shall be resolved~~
11 ~~through contract assignment, reasonable exit fees, or any other~~
12 ~~reasonable means.~~

13 *(e) The commission shall not approve any community choice*
14 *aggregation plan subsequent to September 20, 2001, unless, as a*
15 *condition of approval of the plan, exit fees are imposed on*
16 *customers electing to participate in the community choice*
17 *aggregation plan in an amount sufficient to recover any*
18 *reasonably unavoidable past or future power procurement costs*
19 *incurred by the electrical corporation for bundled service*
20 *customers or by the Department of Water Resources pursuant to*
21 *Division 27 (commencing with Section 80000) of the Water Code*
22 *and to prevent costs shifting to remaining customers served by the*
23 *electrical corporation or the Department of Water Resources.*

24 *(1) At a minimum, the exit fees shall be equivalent to the*
25 *charges that would otherwise be imposed on the customer by the*
26 *commission to recover bond related costs pursuant to any*
27 *agreement between the commission and the Department of Water*
28 *Resources pursuant to Section 80110 of the Water Code, which*
29 *charges shall be payable until any obligations of the Department*
30 *of Water Resources pursuant to Division 27 (commencing with*
31 *Section 80000) of the Water Code are fully paid or otherwise*
32 *discharged. Exit fees relating to any bond charges shall be the*
33 *property of the Department of Water Resources.*

34 *(2) Any other exit fees imposed pursuant to this section shall be*
35 *the property of the electrical corporation or the Department of*
36 *Water Resources, as applicable, and as determined by the*
37 *commission. The commission shall establish mechanisms,*
38 *including agreements with, or orders with respect to, electrical*
39 *corporations necessary to ensure that exit fees imposed pursuant*

1 to this section are promptly remitted to the entity entitled to
2 payment.

3 (3) Exit fees imposed pursuant to this section may be made
4 payable at one time or over a period of time, at the discretion of
5 the commission, but shall be nonbypassable.

6 (4) Any exit fees imposed pursuant to this section that rely on
7 forecasted costs shall be revised by the commission as necessary
8 to reflect changes due to a determination of actual costs. These
9 revisions shall include, but not be limited to, reductions in costs to
10 the Department of Water Resources due to the following:

11 (A) Refunds made by the Federal Energy Regulatory
12 Commission.

13 (B) Contract terminations and contract renegotiations to
14 reduce costs.

15 (5) When exit fee revisions are made, customers who have paid
16 the exit fee shall be refunded the difference between the exit fee they
17 paid and the newly computed exit fee.

18 (f) Notwithstanding Section 80110 of the Water Code, the
19 commission shall authorize community choice aggregation only if
20 exit fees are imposed, as the commission determines necessary
21 pursuant to subdivision (e). Except as provided by this subdivision,
22 the provisions of Assembly Bill 117 of the 2001–02 Regular Session
23 shall not be construed to alter the suspension by the commission
24 of direct purchases of power from alternate providers pursuant to
25 Section 80110 of the Water Code.

26 SEC. 3. Section 381.1 is added to the Public Utilities Code, to
27 read:

28 381.1. The commission shall require the administrator of
29 cost-effective energy efficiency and conservation programs to
30 direct a proportional share of its approved energy efficiency
31 program activities for which the community choice aggregator's
32 customers are eligible, to the community choice aggregator's
33 territory without regard to customer class. To the extent that energy
34 efficiency and conservation programs are targeted to specific
35 locations to avoid or defer transmission or distribution system
36 upgrades, the targeted expenditures shall continue irrespective of
37 whether the loads in those locations are served by an aggregator
38 or by an electrical corporation.. The commission shall also direct
39 the administrator to work with the community choice aggregator,
40 to provide advance information where appropriate about the likely

impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures.

SEC. 4. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, “electric service provider” means an entity that offers electrical service to residential and small commercial customers, *or a provider of electricity to a community choice aggregator, as defined in Section 331*, but does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. “Electric service provider” includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the electric service provider is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director

1 of the company. In addition, each electric service provider shall
2 furnish the commission with fingerprints for those owners,
3 partners, officers, and managers of the electric service provider
4 specified by any commission decision applicable to all electric
5 service providers. The commission shall submit completed
6 fingerprint cards to the Department of Justice. Those fingerprints
7 shall be available for use by the Department of Justice and the
8 Department of Justice may transmit the fingerprints to the Federal
9 Bureau of Investigation for a national criminal history record
10 check. The commission may use information obtained from a
11 national criminal history record check conducted pursuant to this
12 section to determine an electric service provider's eligibility for
13 registration.

14 (9) Proof of financial viability. The commission shall develop
15 uniform standards for determining financial viability and shall
16 publish those standards for public comment no later than March
17 31, 1998. In determining the financial viability of the electric
18 service provider, the commission shall take into account the
19 number of customers the potential registrant expects to serve, the
20 number of kilowatthours of electricity it expects to provide, and
21 any other appropriate criteria to ensure that residential and small
22 commercial customers have adequate recourse in the event of
23 fraud or nonperformance.

24 (10) Proof of technical and operational ability. The
25 commission shall develop uniform standards for determining
26 technical and operational capacity and shall publish those
27 standards for public comment no later than March 31, 1998.

28 (c) Any registration filing approved by the commission prior to
29 the effective date of this section which does not comply in all
30 respects with the requirements of subdivision (a) of Section 394
31 shall nevertheless continue in force and effect so long as within 90
32 days of the effective date of this section the electric service
33 provider undertakes to supplement its registration filing to the
34 satisfaction of the commission. Any registration that is not
35 supplemented by the required information within the time set forth
36 in this subdivision shall be suspended by the commission and shall
37 not be reinstated until the commission has found the registration
38 to be in full compliance with subdivision (a) of Section 394.

39 (d) Any public agency offering aggregation services as
40 provided for in Section 366 solely to retail electric customers



1 within its jurisdiction that has registered with the commission
2 prior to the enactment of this section may voluntarily withdraw its
3 registration to the extent that it is exempted from registration under
4 this chapter.

5 (e) Before reentering the market, electric service providers
6 whose registration has been revoked shall file a formal application
7 with the commission that satisfies the requirements set forth in
8 Section 394.1 and demonstrates the fitness and ability of the
9 electric service provider to comply with all applicable rules of the
10 commission.

11 (f) Registration with the commission is an exercise of the
12 licensing function of the commission, and does not constitute
13 regulation of the rates or terms and conditions of service offered
14 by electric service providers. Nothing in this part authorizes the
15 commission to regulate the rates or terms and conditions of service
16 offered by electric service providers.

17 *SEC. 5. Section 394.25 of the Public Utilities Code is*
18 *amended to read:*

19 394.25. (a) The commission may enforce the provisions of
20 Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against
21 electric service providers as if those electric service providers were
22 public utilities as defined in these code sections. Notwithstanding
23 the above, nothing in this section grants the commission
24 jurisdiction to regulate electric service providers other than as
25 specifically set forth in this part. Electric service providers shall
26 continue to be subject to the provisions of Sections 2111 and 2112.
27 Upon a finding by the commission's executive director that there
28 is evidence to support a finding that the electric service provider
29 has committed an act constituting grounds for suspension or
30 revocation of registration as set forth in subdivision (b) of Section
31 394.25, the commission shall notify the electric service provider
32 in writing and notice an expedited hearing on the suspension or
33 revocation of the electric service provider's registration to be held
34 within 30 days of the notification to the electric service provider
35 of the executive director's finding of evidence to support
36 suspension or revocation of registration. The commission shall,
37 within 45 days after holding the hearing, issue a decision on the
38 suspension or revocation of registration, which shall be based on
39 findings of fact and conclusions of law based on the evidence

1 presented at the hearing. The decision shall include the findings of
2 fact and the conclusions of law relied upon.

3 (b) An electric service provider may have its registration
4 suspended or revoked, immediately or prospectively, in whole or
5 in part, for any of the following acts:

6 (1) Making material misrepresentations in the course of
7 soliciting customers, entering into service agreements with those
8 customers, or administering those service agreements.

9 (2) Dishonesty, fraud, or deceit with the intent to substantially
10 benefit the electric service provider or its employees, agents, or
11 representatives, or to disadvantage retail electric customers.

12 (3) Where the commission finds that there is evidence that the
13 electric service provider is not financially or operationally capable
14 of providing the offered electric service.

15 (4) The misrepresentation of a material fact by an applicant in
16 obtaining a registration pursuant to Section 394.

17 (c) Pursuant to its authority to revoke or suspend registration,
18 the commission may suspend a registration for a specified period
19 or revoke the registration, or in lieu of suspension or revocation,
20 impose a moratorium on adding or soliciting additional customers.
21 Any suspension or revocation of a registration shall require the
22 electric service provider to cease serving customers within the
23 boundaries of investor-owned electric corporations, and the
24 affected customers shall be served by the electrical corporation
25 until the time when they may select service from another service
26 provider. Customers shall not be liable for the payment of any
27 early termination fees or other penalties to any electric service
28 provider under the service agreement if the serving electric service
29 provider's registration is suspended or revoked.

30 (d) The commission shall require any electric service provider
31 whose registration is revoked pursuant to paragraph (4) of
32 subdivision (b) to refund all of the customer credit funds that the
33 electric service provider received from the State Energy Resources
34 Conservation and Development Commission pursuant to
35 paragraph (1) of subdivision (e) of Section 383.5. The repayment
36 of these funds shall be in addition to all other penalties and fines
37 appropriately assessed the electric service provider for committing
38 those acts under other provisions of law. All customer credit funds
39 refunded under this subdivision shall be deposited in the
40 Renewable Resource Trust Fund for redistribution by the State

1 Energy Resources Conservation and Development Commission
2 pursuant to Section 383.5. This subdivision may not be construed
3 to apply retroactively.

4 *(e) If a customer of an electric service provider is involuntarily*
5 *returned to service provided by an electrical corporation, any*
6 *reentry fee imposed on that customer that the commission deems*
7 *is necessary to avoid imposing costs on other customers of the*
8 *electric corporation shall be the obligation of the electric service*
9 *provider. As a condition of its registration pursuant to Section 394,*
10 *an electric service provider shall post a bond or demonstrate*
11 *insurance sufficient to cover those reentry fees. In the event that an*
12 *electric provider becomes insolvent and is unable to discharge its*
13 *obligation to pay reentry fees, the fees shall be allocated to the*
14 *returning customers.*

15 *SEC. 6. No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *the only costs that may be incurred by a local agency or school*
18 *district will be incurred because this act creates a new crime or*
19 *infraction, eliminates a crime or infraction, or changes the penalty*
20 *for a crime or infraction, within the meaning of Section 17556 of*
21 *the Government Code, or changes the definition of a crime within*
22 *the meaning of Section 6 of Article XIII B of the California*
23 *Constitution.*

